

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2295

Invention Submission v. Dudas  
(Brinkema)

INVESTORS RIGHTS ACT. Whether district court erred in  
refusing to allow complaint to be amended on remand.

04-1786

Keaton v. J.F. Allen Company  
(Maxwell)

EMPLOYMENT. Whether age discrimination claims were barred  
when employee was awarded Social Security benefits  
retroactive to date of termination; other issues.

04-2270

Bejarano-Urrutia v. Gonzales

IMMIGRATION. Whether conviction for involuntary  
manslaughter under Virginia Code Section 18.2-36 is a crime  
of violence under 18 U.S.C. Section 16(b).

04-2561

Hatfill v. New York Times Co  
(Hilton)

DEFAMATION. Propriety of 12(b)(6) dismissal of defamation  
and intentional infliction of emotional distress claims  
arising out of New York Times report regarding plaintiff  
and anthrax attacks.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
9:30 a.m.

TUESDAY, MAY 24, 2005

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1678

Malm v. Gonzales  
(Blake)

IMMIGRATION. Whether district court had jurisdiction over  
Section 2241 petition filed by noncriminal alien.

04-1990

Soliman v. Gonzales

IMMIGRATION. Whether alien's conviction for fraudulent use  
of a credit card constitutes an aggravated felony offense  
that renders her removable from the United States.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

TUESDAY, MAY 24, 2005

REVD 4/25/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1700

Auto-Owners Ins v. Essex Homes  
(Anderson)

INSURANCE. Whether claimant's loss of use was the result of an occurrence which took place during the policy period.

04-1986

Builders Mutual v. Marc Homebuilders  
(Anderson)

INSURANCE. Challenge to summary judgment in declaratory judgment action determining that builder's policy did not cover "loss of use" damages by homeowners.

04-1945

Harleysville Mutual v. Mungo Homes  
(Anderson)

INSURANCE. Whether district court erred in determining insurer's duty to defend or indemnify when underlying actions were withdrawn prior to district court's ruling.

04-277

In re: Cabey  
(Fox)

HABEAS. Whether subsequent Section 2254 petition is "second or successive" within the meaning of 28 U.S.C. Section 2244 (2000) when the petition asserts the prisoner is being held beyond the term of his sentence.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

TUESDAY, MAY 24, 2005

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1047

Brantley v. Republic Mortgage  
(Duffy)

ARBITRATION. Did district court err in denying motion to  
compel arbitration filed by nonsignatory defendant?

04-4104

US v. Lynell Linnie Taylor  
(Smith)

CRIMINAL LAW & PROCEDURE. Whether district court had  
jurisdiction to reenter original judgment; whether  
defendant had a right to counsel in Rule 35 proceedings.

04-2300 (L), 04-2459

NLRB v. Valcourt Exterior

LABOR. Whether NLRB properly certified Union as exclusive  
representative following Board-certified election.

04-2093

Diamond v. Colonial Life  
(Anderson)

TITLE VII. Whether plaintiff abandoned retaliation claims;  
challenge to summary judgment on failure to promote claims.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
9:30 a.m.

TUESDAY, MAY 24, 2005

REVD 4/29/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1650

Collins v. Prince Wm Cnty Pub  
(Hilton)

SECTION 1983. Propriety of denial of motion to continue  
discovery under Fed.R.Civ.P. 56(f); whether Board's  
policies were impermissibly vague; other issues.

04-7760

US v. Kevin E. Ball  
(Copenhaver)

HABEAS CORPUS. Whether Miranda claim was procedurally  
defaulted; whether petitioner can relitigate ex post facto  
claim; alleged ineffective assistance of counsel.

04-2151 (I), 04-2165

Mikkelsen v. DeWitt  
(Norton)

CIVIL RIGHTS. Challenge to summary judgment on free speech  
and equal protection claims.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
9:30 a.m.

TUESDAY, MAY 24, 2005

REVD 5/9/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2516  
Pittsburgh Logistics v. Wheeling-Nisshin  
(Stamp)

TRADE SECRETS. Whether district court erred in rejecting plaintiff's claims for misappropriation of trade secrets.

03-1683  
Nye v. Roberts  
(Motz)

TITLE VII. Whether plaintiff established an adverse employment action and retaliatory discrimination sufficient to defeat summary judgment.

04-2148 (I), 04-2149  
Tao of Systems v. Analytical Services  
(Smith)

CIVIL. Challenge to summary judgment on Lanham Act false advertising claim and trade secrets counterclaim.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
9:30 a.m.

WEDNESDAY, MAY 25, 2005

REVD 5/19/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1922

Runkle v. Monarch Machine Tool  
(Duffy)

CIVIL PROCEDURE. Challenge to voluntary dismissal of tort action of defendants in bankruptcy and the lifting of the automatic stay as to remaining defendants.

04-1625

Baldwin v. England  
(Williams)

TITLE VII. Did federal employer's failure to request desk audit defeat prima facie case of discrimination.

04-1467

General Electric Cap v. Union Corp Financial  
(Messitte)

ARBITRATION. Challenge to denial of motion to compel arbitration.

04-2370 (L), 04-2378

Ethridge v. American Family Life  
(Houck)

ERISA. Challenge to summary judgment on issue of whether short term sickness disability benefit covered on-the-job injury; other issues.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

WEDNESDAY, MAY 25, 2005

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2187

Hill v. PeopleSoft USA Inc  
(Titus)

ARBITRATION. Challenge to order denying motion to compel arbitration.

04-2216

New Wellington v. Flagship Resort  
(Moon)

FEDERAL JURISDICTION. Challenge to dismissal for lack of personal and subject matter jurisdiction.

04-2271

Varghese v. Honeywell Intl Inc  
(Nickerson)

ERISA. Whether stock options are properly classified as "wages"; whether state law separation pay claim is preempted by federal law.

04-2301

Meeker v. Edmundson  
(Boyle)

CIVIL RIGHTS. Challenge to denial of qualified immunity to high school wrestling coach; other issues.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

WEDNESDAY, MAY 25, 2005



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1548

Willingham v. Crooke  
(Brinkema)

JURY INSTRUCTION. Whether district court's jury instruction on qualified immunity was harmless error.

04-2557

Fuisz v. Lynch  
(O'Grady)

CORPORATIONS. Whether district court improperly concluded, under Virginia law, that new architecture firm was continuation of old firm and therefore liable for its debts.

04-2539

Bowe Bell & Howell v. Harris  
(Bennett)

PRELIMINARY INJUNCTION. Whether district court abused its discretion in granting plaintiff's motion for preliminary injunction, in part, in action for copyright and trademark infringement and loss of confidential information and trade secrets.

03-1782 (L), 03-1880

Cox v. City of Charleston  
(Norton)

FIRST AMENDMENT. Whether city ordinance improperly limited expressive activity on public streets; other issues.

PANEL IV

COURTROOM FOUR

Courthouse Room 414-D (Tweed Carpet)

\*\* 9:00 a.m. \*\*

WEDNESDAY, MAY 25, 2005

REVD 5/24/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1604 (L), 04-2197

Carolina Power v. Dynegy Marketing  
(Boyle)

CIVIL. Whether timely notice of appeal was filed from final order; contract interpretation; other issues.

04-1665

Magassy v. Commissioner, IRS

TAX. Whether taxpayer had a profit motive in chartering and selling his yacht.

04-2047

Roanoke Cement Co v. Falk Corporation  
(Conrad)

CONTRACTS. Challenge to denial of indemnification.

04-2171

Sunrise Corp v. City of Myrtle Beach  
(Houck)

CIVIL. Whether res judicata barred parties from litigating claims previously presented in state court; other issues.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
9:30 a.m.

WEDNESDAY, MAY 25, 2005

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2307

Mitchell v. Fortis Benefits  
(Voorhees)

ERISA. Whether plan administrator abused its discretion in denying long term disability benefits; attorney's fees.

04-1495

Sterling v. Tenet  
(Lee)

STATE SECRET PRIVILEGE. Challenge to dismissal of Title VII case to protect classified information.

04-2201

Venugopal v. Shire Laboratories  
(Williams)

TITLE VII. Whether employer did not promote appellant because of her national origin; constructive discharge claims.

04-2073

Arcon, Incorporated v. OSHC

OSHA. Whether Commission properly assessed penalties on corporation for violating safety standards when removing asbestos from a vessel.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
9:30 a.m.

THURSDAY, MAY 26, 2005

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1051

Bryte v. American Household  
(Williams)

EVIDENCE. Whether district court misapplied malfunction theory to circumstantial evidence; expert testimony; other issues.

04-1151 (L), 04-1561 04-2016 04-2029

Bryte v. American Household  
(Williams)

ATTORNEY FEES. Challenge to award of fees and expenses for sanction motion denied by district court; other issues.

04-2052

American Canoe Assoc v. Murphy Farms Inc  
(Fox)

CLEAN WATER ACT. Whether hog farmers were "in violation" for purposes of the citizen suit provisions of the Act.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

THURSDAY, MAY 26, 2005

REVD 5/16/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1934

White v. Wright  
(Williams)

FOURTH AMENDMENT. Various issues arising out of  
unsuccessful prosecution for mail fraud.

04-1852

Bizprolink LLC v. America Online Inc  
(Brinkema)

DISCOVERY. Challenge to dismissal of case for failure of  
plaintiff to answer written interrogatory.

04-2028

Selective Insurance v. Terry  
(Bullock)

INSURANCE. Whether operator of vehicle at the time of  
accident was a permissive user for policy coverage.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

THURSDAY, MAY 26, 2005

REVD 5/19/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2285

Carolina Casualty v. Draper & Goldberg  
(Cacheris)

INSURANCE. Whether prospective insured's failure to disclose lawsuits was a material nondisclosure justifying rescission of insurance policy.

04-1649

Thomas v. Lodge No. 2461  
(Payne)

LABOR. Whether union breached duty of fair representation; whether employer breached collective bargaining agreement by discharging plaintiff.

04-1804

United Seniors v. Social Sec. Adm.

CONSTITUTIONAL LAW. Whether statute restricting use of "Social Security" and similar terms in advertisements or solicitations is unconstitutionally vague or overbroad; other issues.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
9:30 a.m.

THURSDAY, MAY 26, 2005

REVD 4/12/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

04-4649  
US v. Benjamin Scott  
(Keeley)

04-2011 (L), 04-2122  
Lamparello v. Falwell  
(Hilton)

04-1631  
Merenstein v. St. Paul Fire  
(Hilton)

NATURE OF CASE

CRIMINAL LAW & PROCEDURE. Whether intent to exercise control is an element of constructive possession that must be included in jury instructions.

TRADEMARK. Whether parody website is non-commercial and does not infringe on defendants' domain name.

CIVIL. Whether plaintiff stated a claim of fraud under Virginia law.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
9:30 a.m.

THURSDAY, MAY 26, 2005

REVD 5/19/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-4309

US v. Anthony Pope  
(Messitte)

SENTENCING GUIDELINES. Whether a judge may make a factual finding regarding a defendant's career offender status under U.S.S.G. Section 4B1.1.

04-4549

US v. William Moya  
(Garbis)

CRIMINAL LAW & PROCEDURE. Whether district court erred in instructing the jury on aiding and abetting; whether prosecution argument was improper; whether evidence was sufficient.

04-2257

Peagler v. USAA Insurance Co  
(Norton)

INSURANCE. Whether automobile liability policy covers firearms accident.

04-4685 (L), 04-4686 04-4770 04-4771

US v. Barbara M. Agnew  
(Friedman)

CRIMINAL LAW & PROCEDURE. Judicial bias; application of Blakely/Booker in context of bench trial.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
8:30 a.m.

FRIDAY, MAY 27, 2005



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-30

Brown v. Polk  
(Howard)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

04-1688

TFWS, Incorporated v. Schaefer

CONSTITUTIONAL LAW. Whether state's regulations regarding liquor distribution and sale are protected under the Twenty-First Amendment.

04-2374 (L), 04-2458

Hall v. Chrysler Credit Corp  
(Cacheris)

BANKRUPTCY. Whether transfers made to Chrysler Credit Corporation were "preferential transfers."

04-7223

Green v. Johnson  
(Doumar)

PLRA. Whether a suit dismissed for failure to exhaust administrative remedies counts as a "strike."

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
8:30 a.m.

FRIDAY, MAY 27, 2005

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2330  
Chao v. Rivendell Woods Inc  
(Thornburg)

CIVIL PROCEDURE. Whether district court erred in dismissing  
Secretary of Labor's amended FLSA complaint.

04-4007  
US v. Marcus L. Badey  
(Howard)

EVIDENCE. Whether district court abused its discretion in  
refusing to admit a police officer's report under Fed. R.  
Evid. 803(8)(C).

04-4832  
US v. Brett A. Bursey  
(Currie)

CRIMINAL. Challenge to conviction for entering an unmarked  
restricted area created by the Secret Service.

04-4628  
US v. Jason Lorel Minter  
(Chambers)

CRIMINAL LAW & PROCEDURE. Batson v. Kentucky challenge;  
other issues.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
8:30 a.m.

FRIDAY, MAY 27, 2005

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-4722

US v. George C. Cooke  
(Faber)

SENTENCING GUIDELINES. Whether imposition of alternative sentence under Hammoud is plain error when appellant is serving shorter guidelines sentence; other issues.

04-4678

US v. Tony Lee Thompson  
(Bullock)

SENTENCING GUIDELINES. Whether 18 U.S.C. Section 924(e) armed career criminal sentence was error under Blakely v. Washington; whether criminal history determination was error under Blakely.

04-4790

US v. Amin Harris  
(Spencer)

CRIMINAL LAW & PROCEDURE. Effect of United States v. Booker, 125 S. Ct. 738 (2005), where alternative sentence is higher than guideline sentence; other issues.

PANEL IV

COURTROOM FOUR

Courthouse Room 414-D (Tweed Carpet)

\*\* 8:15 a.m. \*\*

FRIDAY, MAY 27, 2005

REVD 5/24/05

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/24/2005 - 05/27/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-4522  
US v. Antwone Evans  
(Bullock)

SENTENCING GUIDELINES. Whether Evans' federal guidelines sentence is plainly erroneous in light of United States v. Booker, 125 S. Ct. 738 (2005).

04-2132  
Laber v. Brownlee  
(Lee)

TITLE VII. Challenge to summary judgment on retaliation, discrimination and additional compensation claims; timeliness of civil action.

04-4445  
US v. Cecil Cheek  
(Wooten)

CRIMINAL LAW. Whether appellant's challenge to his sentence under Blakely v. Washington, 124 S. Ct. 2531 (2004) is precluded because the plea agreement provided that the sentence was in conformity with the Sentencing Guidelines.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
8:30 a.m.

FRIDAY, MAY 27, 2005